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REMARKS

Claims 40-79 are currently pending in the subject application and are presently under consideration. Claims 40, 50, 53, 59, 67, 69, 70, 74, and 79 have been amended herein. Claims 48, 57, 65, 66, and 75 have been cancelled herein. A listing of all claims can be found on pages 2-9. Amendments to the independent claims include aspects previously recited in dependent claims, and thus no new search is necessary on the part of the Examiner.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Objections to the Claims

Claim 65 is objected to for failing to further limit the subject matter of a previous claim. Claim 65 has been cancelled herein in accordance with the Examiner's suggestions. Accordingly, this objection should be withdrawn.

II. Rejection of Claims 50-58, 67, and 68 under 35 U.S.C. §101

Claims 50-58, 67, and 68 stand rejected under 35 U.S.C. §101 as not being directed to statutory subject matter. Independent claims 50 and 67 have been amended herein to set forth the aspect of status information that comprises "component version information, such that the website communicates version upgrade information to at least one of the plurality of components in response to outdated component version information," and a periodic status message that is "stored in the computer memory," respectively, which amendments are believed to overcome the Examiner's rejection. Specifically, upgrading the version of a component provides a concrete and tangible result, as does storing a periodic status message (e.g., causing a concrete and tangible change in computer memory). Moreover, it is noted that the Federal Circuit has recently reiterated its position that software code alone is patentable regardless of whether it is stored in a "computer-readable medium."

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This court must also decide whether software code made in the United States and exported abroad is a "component of a patented invention" under 271(f)... Section 271(f) refers to "components of a patented invention."... Title 35, section 101, explains that an invention includes "any new and useful process, machine, manufacture or composition of matter."... Without question, *software code alone qualifies as an invention eligible for patenting under these categories*, at least as processes. *Eolas Techs., Inc. v. Microsoft Corp.*, 399 F.3d 1325, 1338 (Fed. Cir. 2005). (Emphasis added).

In view of at least the above, withdrawal of this rejection is respectfully requested.

III. Rejection of Claims 40-47, 49, 74, 76, and 78 Under 35 USC §103(a)

Claims 40-47, 49, 74, 76, and 78 stand rejected under 35 USC §103(a) as being unpatentable over Ogushi *et al.* (US 6,385,497) in view of Shigematsu *et al.* (US 5,432,715). It is respectfully submitted that this rejection should be withdrawn for at least the following reasons. Ogushi *et al.* and Shigematsu *et al.*, individually and in combination, do not teach or suggest all the claim limitations of the subject claims.

To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP §706.02(j).

Independent claim 40 (and similarly independent claim 74) has been amended herein to recite "a factory automation system for providing status information on at least one factory automation component, comprising: a factory automation component distributed by a first party; the component residing at a site location of a second party;

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and the component communicating status information directly to the first party wherein the first party compiles the status information from the component and utilizes the status information to the benefit of the second party, the status information comprises component source information, first party site address information, component type information, second party site information and component health information; *wherein the server site of the first party communicates version upgrade information to the component in response to version information from the component that does not correspond to a latest version.*" Such aspects were previously set forth in dependent claims 48 and 75. Version information is described in the specification as relating to a software version. For example, "the server determines if the appropriate component version is loaded on the component... If the correct version is not loaded, the server 15 determines whether or not an automatic upgrade can be performed on this type of component... the server 15 downloads the upgrade information to the component...." (Page 15, line 21-page 16, line 1.) Neither Ogushi *et al.* nor Shigematsu *et al.* teach or suggest such claimed aspects of the subject invention.

The Examiner relies on Martinez *et al.*, in a separate rejection of claim 48 (now cancelled, and the claimed subject matter thereof incorporated into independent claim 40), to suggest the aspect of "version information." However, contrary to the Examiner's assertions, Martinez *et al.* fails to teach or suggest the aspect of a *server site of the first party that communicates version upgrade information to the component in response to version information from the component that does not correspond to a latest version.* Rather, the Examiner's cited section refers to a component type and component version number of hardware in a cabinet, such that type and version as employed in Martinez *et al.* describe a make and model of, for example, a disk drive or power source. Moreover, the cited references are silent with regard to a server that provides upgrade version information to a component in response to an indication that the version presently run on the component is outdated.

For the aforementioned reasons, the combination of Ogushi, *et al.* and Shigematsu *et al.* does not teach or suggest each and every element of the subject invention as recited in independent claims 40 and 74 (and claims 41-47, 49, 76, and 78 which depend therefrom). Accordingly, this rejection should be withdrawn.

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IV. Rejection of Claims 48, 59, 61-66, 69-73, 75, and 79 Under 35 USC §103(a)

Claims 48, 59, 61-66, 69-73, 75, and 79 stand rejected under 35 USC §103(a) as being unpatentable over Ogushi *et al.* (US 6,385,497) in view of Shigematsu *et al.* (US 5,432,715) and further in view of Martinez *et al.* (US 5,956,665). It is respectfully submitted that this rejection should be withdrawn for at least the following reasons. Claims 48 and 75 have been cancelled herein. Neither Ogushi *et al.*, Shigematsu *et al.*, nor Martinez *et al.*, individually or in combination, teach or suggest all the claim limitations of the subject claims.

Independent claim 40 has been amended to recite “*server site of the first party communicates version upgrade information to the component in response to version information from the component that does not correspond to a latest version.*” Independent claims 59, 69, 70, 74, and 79 have been amended to recite similar aspects. Neither Ogushi *et al.* nor Shigematsu *et al.* teach or suggest such aspects as set forth in the subject claims.

As stated above, the Examiner relies on Martinez *et al.* to suggest the aspect of “version information.” However, nothing in Martinez *et al.* suggests that version information is related to a component software version, let alone upgradeable by a server or website upon a determination that a component is not running the most up-to-date version. IN view of such, Martinez *et al.* fails to overcome the deficiencies of Ogushi *et al.* and Shigematsu *et al.* with regard to the subject independent claims

For the above-mentioned reasons, Ogushi *et al.*, Shigematsu *et al.*, nor Martinez *et al.*, individually or in combination, make obvious independent claims 40, 59, 69, 70, 74, and 79 (or claims 61-66, and 71-73, which depend respectively there from). Accordingly, this rejection should be withdrawn.

V. Rejection of Claims 50-52, 54-56, 58, and 77 Under 35 USC §103(a)

Claims 50-52, 54-56, 58, and 77 stand rejected under 35 USC §103(a) as being unpatentable over Ogushi *et al.* (US 6,385,497) in view of Shigematsu *et al.* (US 5,432,715) and further in view of Sekizawa (US 6,430,711). It is respectfully submitted that this rejection should be withdrawn for at least the following reasons. Neither Ogushi

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et al., Shigematsu *et al.*, nor Sekizawa, individually or in combination, teach or suggest all the claim limitations of the subject claims.

Independent claim 50 has been amended herein to set forth *status information that includes component version information, such that the website communicates version upgrade information to at least one of the plurality of components in response to outdated component version information*. Independent claim 74 has been similarly amended herein.

As stated in the previous sections, neither Ogushi *et al.* nor Shigematsu *et al.*, lone or in combination, teach or suggest such aspects of applicant's claimed invention. Sekizawa fails to overcome the deficiencies of Ogushi *et al.* and Shigematsu *et al.* with regard to the subject claims. Specifically, Sekizawa fails to teach or suggest a website that communicates upgrade information to a component that is running an outdated version.

In view of at least the foregoing, it is readily apparent that none of the cited references, whether taken alone or in combination, make obvious independent claims 50 and 74 (and claims 51, 52, 54-56, 58, and 77, which depend respectively there from). Accordingly, this rejection should be withdrawn.

VI. Rejection of Claims 53 and 57 Under 35 USC §103(a)

Claims 53 and 57 stand rejected under 35 USC §103(a) as being unpatentable over Ogushi *et al.* (US 6,385,497) in view of Shigematsu *et al.* (US 5,432,715), further in view of Sekizawa (US 6,430,711), and further in view of Martinez *et al.* (US 5,956,665). It is respectfully submitted that this rejection should be withdrawn for at least the following reasons. Claim 57 has been cancelled herein. Claim 53 depends from independent claim 50, and Martinez *et al.* fails to overcome the aforementioned deficiencies of the references cited with respect thereto. Accordingly, withdrawal of this rejection and allowance of claim 53 is respectfully requested.

VII. Rejection of Claim 60 Under 35 USC §103(a)

Claim 60 stands rejected under 35 USC §103(a) as being unpatentable over Ogushi *et al.* (US 6,385,497) in view of Shigematsu *et al.* (US 5,432,715), further in view

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of Martinez *et al.* (US 5,956,665), and further in view of Sekizawa (US 6,430,711). It is respectfully submitted that this rejection should be withdrawn for at least the following reasons. Claim 60 depends from independent claim 59, and Sekizawa fails to overcome for the aforementioned deficiencies of the cited references with regard to claim 59. Accordingly, this rejection should be withdrawn.

VIII. Rejection of Claims 67 and 68 Under 35 USC §103(a)

Claims 67 and 68 stand rejected under 35 USC §103(a) as being unpatentable over Ogushi, *et al.* (US 6,385,497) in view of Sekizawa (US 6,430,711). It is respectfully submitted that this rejection should be withdrawn for at least the following reasons. Ogushi, *et al.* and Sekizawa, whether taken alone or in combination, do not teach or suggest all the limitations of the subject claims.

Specifically, Ogushi *et al.* does not teach or suggest a status message including health information relating to the factory automation component, as defined in the specification of the application. Rather, Ogushi *et al.* is directed to sending trouble information or error codes. Further, Ogushi *et al.* does not teach or suggest the factory automation component having an IP address. Rather, IP addresses associated with each factory automation component are absent from Ogushi *et al.*

In addition, there is no motivation to combine Ogushi *et al.* with Sekizawa, as Sekizawa is non-analogous to Ogushi *et al.*, since it does not relate to factory automation components as recited in the subject claims. Instead, Sekizawa relates to a plurality of network printers in a business environment. There is no mention in Ogushi *et al.* of utilizing network printers and there is no mention in Sekizawa of factory automation components, let alone the art of factory automation. Thus, since Sekizawa is concerned with the non-analogous art of network printers and does not contemplate factory automation, there is no motivation to combine Ogushi *et al.* with Sekizawa and such a combination is improper. *The mere fact that references can be modified does not render the modification obvious unless the cited art also suggests the desirability of the modification.* *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

Accordingly, the combination of Ogushi *et al.* and Sekizawa does not make obvious claim 67 (and claim 68, which depends there from). Additionally, there is no

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motivation to make such a combination. Therefore, withdrawal of this rejection is respectfully requested.

CONCLUSION

The present application is believed to be in condition for allowance, in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063.

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

AMIN & TUROCY, LLP



Himanshu S. Amin
Reg. No. 40,894

AMIN & TUROCY, LLP
24TH Floor, National City Center
1900 E. 9TH Street
Cleveland, Ohio 44114
Telephone (216) 696-8730
Facsimile (216) 696-8731